

STATE OF MICHIGAN  
IN THE SUPREME COURT

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PEOPLE OF THE STATE OF MICHIGAN,

Supreme Court No.: 155273

Plaintiff-Appellee,

Court of Appeals No.: 327065

v.

Wayne Circuit No.: 14-011190-FH

SAMER SHAMI,

Defendant-Appellant.

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**DEFENDANT-APPELLANT'S  
SUPPLEMENTAL BRIEF  
IN SUPPORT OF THE  
APPLICATION FOR LEAVE TO APPEAL**

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## TABLE OF CONTENTS

INDEX OF AUTHORITIES .....	ii
QUESTIONS PRESENTED FOR REVIEW .....	iv
STATEMENT OF FACTS .....	1
LEGAL ARGUMENT .....	3
I. THE DEFENDANT-APPELLANT'S ACTIVITIES OF MIXING DIFFERENT FLAVORS OF TOBACCO TO CREATE DIFFERENT FLAVOR COMBINATIONS AND THE SEPARATE ACTIVITY OF REPACKAGING TOBACCO UNDER HIS OWN LABEL DOES NOT RENDER HIM A "MANUFACTURER" OF TOBACCO.....	3
A. Introduction .....	3
B. "Manufacturing" Requires the Transformation of "Raw Material" Into a New and Different Article .....	5
II. THE TPTA'S DEFINITION OF "MANUFACTURER" DID NOT SATISFY DUE PROCESS BY PUTTING THE DEFENDANT ON FAIR NOTICE OF THE CONDUCT THAT WOULD SUBJECT HIM TO PUNISHMENT.....	9
A. Introduction .....	9
B. A Criminal Statute Fails to Provide "Fair Notice" If An Individual May Be Required To "Guess At" Or Meaningfully Differ In Opinion Regarding What Conduct Is Proscribed.....	10
C. The Michigan Supreme Court Has Previously Ruled That Where An Appellate Decision Is Required To Clarify "Proscribed Conduct" Such Decision Provides Constructive Notice to Future Defendants But The Application Should Not Be Applied Retroactively .....	11
D. Criminal Statutes Must Be Strictly Construed and Doubtful Conduct Should Be Found Not Criminal.....	14
RELIEF REQUESTED .....	15

## INDEX OF AUTHORITIES

### Cases

<i>Anheuser-Busch Brewing Association v United States</i> , 207 US 556, 562; 28 SCt 204, 206-207, 52 LEd 336 (1908) .....	5
<i>Bay Bottled Gas Company v Department of Revenue</i> , 344 Mich 326; 74 NW2d 37 (1955) .....	6
<i>Edison v Department of Revenue</i> , 362 Mich 158; 106 NW2d 802 (1961).....	6
<i>Elias Brothers Restaurants Inc v Department of Treasury</i> , 452 Mich 144; 549 NW2d 837 (1996).....	6, 7, 8
<i>Global Imports v Michigan Department of Treasury</i> , (Unpublished) Michigan Court of Appeals Docket 183497 (1997).....	4
<i>Malpass v Department of Treasury</i> , 494 Mich 237 (2013) .....	4, 5, 14
<i>Michigan Allied Dairy Association v Auditor General</i> 302 Mich 643; 5 NW2d 516 (1942) .....	5, 6
<i>Minnaert v Department of Revenue</i> , 366 Mich 117; 113 NW2d 868 (1962).....	6
<i>Moore v Farmer's Mutual Manufacturing &amp; Ginning Co</i> , 51 AR 378, 382; 77 P2d 209, 211 .....	6
<i>People v Dempster</i> 396 Mich 700; 242 NW2d 381 (1976).....	10, 11, 13
<i>People v Fady Assy</i> 316 Mich App 302, 305; 891 NW2d 280 (2016) .....	9
<i>People v Hall</i> , 499 Mich 446, 460-461; 884 NW2d 561 (2016) .....	9
<i>People v Howell</i> , 396 Mich 16; 238 NW2d 148 (1976).....	9
<i>People v Jones</i> , 142 Mich App 819; 371 NW2d 459 (1985) .....	14
<i>People v Mesick</i> , 285 Mich App 535; 775 NW2d 857 (2009) .....	10
<i>Van Bennett Food Co v City of Reading</i> , 87 Pa Commw 30, 37-38; 486 A2d 1025 (1985).....	7
<i>Zeller v Bogue Electric Manufacturing Corp</i> , 476 F2d 795, 899 (CA 2 1973) .....	12

### Statutes

MCL 205.422(1).....	3
MCL 205.423.....	1
MCL 205.428.....	4

MCL 205.428(3).....	1
MCL 205.433(2).....	4
Tobacco Products Tax Act, 1993 PA 327 .....	passim

**Other Authorities**

17 ALR3d 7, sec. 3, pp. 23-25.....	7
<i>American Heritage Dictionary (2nd College ed.)</i> , p. 764 .....	9
<i>Merriam-Webster's Collegiate Dictionary (10th ed.)</i> , p. 709.....	9

## QUESTIONS PRESENTED FOR REVIEW

- I. Whether the Defendant's activities of mixing different flavors of tobacco to create different flavor combinations to offer customers and repackaging tobacco under his own label rendered him a "manufacturer" of tobacco, MCL 205.422(m) of the Tobacco Products Tax Act (TPTA)?

**Plaintiff-Appellee answers: Yes**

**Defendant-Appellant answers: No**

**Court of Appeals answers: Yes**

**Circuit Court answers: No**

- II. Whether the TPTA's definition of "manufacturer" satisfied due process by putting the Defendant on fair notice of the conduct that would subject him to punishment?

**Plaintiff-Appellee answers: Yes**

**Defendant-Appellant answers: No**

**Court of Appeals answers: Yes**

**Circuit Court answers: No**

## STATEMENT OF FACTS

Sam Molasses LLC, operated a retail Hookah tobacco store located at 15322 West Warren Avenue, Dearborn, Michigan. The LLC also was licensed as a "secondary wholesaler" and an "unclassified acquirer" by the Department of Treasury under the Tobacco Products Tax Act, 1993 PA 327. However, neither Sam Molasses LLC nor Samer Shami were licensed as a "manufacturer" under the Tobacco Products Tax Act. Samer Shami has been charged criminally with "possession of tobacco products other than cigarettes with a wholesale price of \$250 or more, without having a license to manufacture." MCL 205.423; MCL 205.428(3).

Other Tobacco Products (OTP) references all tobacco products other than cigarettes and includes smokeless tobacco, pipe tobacco and Hookah tobacco. Hookah tobacco, in turn, refers to a tobacco product that contains a mixture of tobacco, molasses substance and glycerin. Hookah tobacco is smoked in a water pipe. Thus, it is also referred to as water pipe tobacco.

During the relevant time period, Sam Molasses LLC sold a mixture or blend of Hookah tobacco at its retail store. An example of a blended Hookah tobacco product would result when Shami mixed a package (250 grams) of cherry flavored Hookah tobacco with a package (250 grams) of grape flavored Hookah tobacco. The blending consisted of either taking a spoon and mixing the tobacco in a container or putting on rubber gloves and mixing the tobacco by hand. After the Hookah tobacco had been blended, the cherry-grape combination was placed in a plastic Tupperware-like container, labeled with a name (e.g., Sam's Delight) and placed on a shelf in the retail store. The retail customer would then enter the store, lift the plastic cover off the Tupperware container and scoop a small quantity (2-3 ounces) of the mixed Hookah tobacco into a plastic bag. The customer then completed the retail purchase.

In addition to the retail sale of blended Hookah tobacco, Sam Molasses LLC also re-packaged tobacco. Sam Molasses LLC purchased small plastic bags containing 250 grams of Hookah from a distributor who had acquired the tobacco from a manufacturer located in Jordan.

Sam Molasses LLC and/or Samer Shami took the plastic bags containing the Hookah tobacco and placed them into small tin containers with the label "360." The small tin containers of 360 Hookah tobacco, in turn, were sold either at the Sam Molasses LLC retail location or sold to other retailers pursuant to the "unclassified acquirer's license."

The criminal charge are based upon two separate activities: (1) the Defendant's blending of the Hookah tobacco; and (2) the Defendant's placement of the small plastic bags of Hookah tobacco into the small tin containers.

## LEGAL ARGUMENT

### **I. THE DEFENDANT-APPELLANT'S ACTIVITIES OF MIXING DIFFERENT FLAVORS OF TOBACCO TO CREATE DIFFERENT FLAVOR COMBINATIONS AND THE SEPARATE ACTIVITY OF REPACKAGING TOBACCO UNDER HIS OWN LABEL DOES NOT RENDER HIM A "MANUFACTURER" OF TOBACCO**

#### **A. Introduction**

In 1993, the Michigan Legislature enacted the Tobacco Products Tax Act (TPTA). This legislation requires manufacturers of tobacco products to be licensed by the Department of Treasury MCL 205.423. Neither Samir Shami nor the business, Sam Molasses LLC, were licensed by the Department of Treasury as a manufacturer during the relevant time period.

The term "manufacturer" is defined in the TPTA as a "person who manufactures or produces a tobacco product." MCL 205.422(1). The government acknowledges that this definition is circular to the extent it fails to set forth the "plain meaning" of the term. The government, therefore, after 24 years now seeks the Court's guidance as to what constitutes a "manufacturer" so that it may pursue criminal charges.

Furthermore, the statutory definition of a "manufacturer" under the TPTA is circular and clarification from this court is needed to determine what the plain meaning of that term means. The People believe this Court should look to the dictionary definition, other sections of the TPTA, and other legislative definitions or other prior cases on manufacturing in other areas of law to give plain meaning to "manufacturer" as used in the TPTA.

(Government's Court of Appeals Brief, p. 3.)

However, despite the Department of Treasury's plea for guidance from this Court, the TPTA already specifically authorizes the Department of Treasury to adopt rules for the administration of the Act.



- (2) The revenue commissioner may promulgate rules to implement this act pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. MCL 205.428.

MCL 205.433(2).

The Department of Treasury has not adopted any rule, regulation or guideline relating to the conduct which constitutes "manufacturing" despite repeated warnings by the Appellate Courts that it is the government's responsibility to adopt rules to administer the Act not the courts. In *Global Imports v Michigan Department of Treasury*, (Unpublished) Michigan Court of Appeals Docket 183497 (1997), the Court of Appeals noted that the Revenue Commissioner, while authorized by the TPTA § 433(2), to promulgate rules, had failed to do so which resulted in a violation of the defendants right to due process.

Also, the Revenue Commissioner failed to promulgate rules to implement the Act as required by MCL 205.433(2); MSA 7.411(43)(2). While such rules could have cured the problems described above, no such rules had been promulgated when the Department seized Plaintiff's property. Therefore, we agree that the forfeiture provisions of the TPTA are unconstitutional, in that they could not be enforced even if the Plaintiffs were accorded due process in this particular case.

(Copy of *Global Imports* decision, attached as **Exhibit A**.)

Similarly, the Michigan Supreme Court in *Malpass v Department of Treasury*, 494 Mich 237 (2013), considered the Department of Treasury's argument that the taxpayer under the provisions of the Income Tax Act could not file a Combined Tax Return because "it [Treasury] has always required the use of separate entity reporting." The Supreme Court rejected the government's argument, noting that although the Department of Treasury had rule-making authority it failed to enact a rule requiring only separate tax return reporting. The Court further held it was not the Supreme Court's responsibility to either adopt the Department of Treasury's interpretation or to engage in rule making because it transcends the judicial function.

Faced with a statutory provision that is broad enough to encompass both reporting options- but does not choose between them – the Department asks this Court to adopt its preferred methodology. However, we decline this invitation to engage in interstitial rule making because "to supply omissions transcends the judicial function." Instead, in the absence of a policy choice by the Legislature, we conclude that the ITA permits either reporting method.

*Malpass, supra*, at 251.

In light of the fact the Department of Treasury has failed to define the term "manufacturer," the most consistent analysis lies within the framework of the Michigan Supreme Court cases dating back to 1942, which refer to manufacturing in the context of the industrial processing exemption under the General Sales Tax Act and Use Tax Act.

**B. "Manufacturing" Requires the Transformation of "Raw Material" Into a New and Different Article**

The United States Supreme Court in *Anheuser-Busch Brewing Association v United States*, 207 US 556, 562; 28 SCt 204, 206-207, 52 LEd 336 (1908), while recognizing there is little distinction between the manufacturing process and the industrial process stated that the term "manufacture" does not encompass every change to a product rather it requires a transformation resulting in a new and different article.

Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labor, and manipulation. But something more is necessary . . . . There must be transformation; a new and different article must emerge, having a distinctive name, character or use.

The Michigan Supreme Court, in *Michigan Allied Dairy Association v Auditor General* 302 Mich 643; 5 NW2d 516 (1942), on the other hand, while not specifically discussing the term "manufacturer" or "manufacture," considered whether the pasteurization of milk was an industrial process subject to exemption under the General Sales Tax Act. The Court in approving the tax exemption quoted with approval the Arizona Supreme Court's determination

that an essential element of the definition of "processing" required the preparation of raw material for the market.

The Supreme Court of Arizona, in construing the word "processing" in the Arizona Privilege Sales Tax stated:

It will be seen that the essential portion of the definition is to prepare raw material . . . for the market . . . . *Moore v Farmer's Mutual Manufacturing & Ginning Co*, 51 AR 378, 382; 77 P2d 209, 211; *Mich Allied Dairy Assoc*, *supra*, at 648.

In addition, the Michigan Supreme Court in *Edison v Department of Revenue*, 362 Mich 158; 106 NW2d 802 (1961), considered whether a road builder was engaged in an "industrial process." The Court in that case cited with approval the analysis as set forth in *Bay Bottled Gas Company v Department of Revenue*, 344 Mich 326; 74 NW2d 37 (1955), which focused on whether a gas handling system rendered the product marketable and thus an industrial process. The Court again referred to the preparation of "raw material" for market in reaching its decision that the gas handling system did not qualify for the industrial processing exemption.

The processing referred to in the act, however, held the court, citing an earlier case, was the preparation of "raw material \*\*\* for the market." *Id.* 344 Mich, at page 330; 774 NW2d, at page 39. The court then related its definition to that given in Webster's New International Dictionary:

"to subject (especially raw material) to a process of manufacturing, development, preparation for the market, et cetera; to convert into marketable form, as livestock by slaughtering, grain by milling, cotton by spinning, fruits and vegetables by sorting and repacking." *Edison, supra*, at 161, 162; *see also Minnaert v Department of Revenue*, 366 Mich 117; 113 NW2d 868 (1962).

More recently, Justice Cavanagh while concurring in part and dissenting in part in *Elias Brothers Restaurants Inc v Department of Treasury*, 452 Mich 144; 549 NW2d 837 (1996),

noted as a preliminary matter that the legislative history of the term "industrial processing"<sup>1</sup> is for all intents and purposes is synonymous with the term "manufacturing". Moreover, the definition of "manufacturing" within the meaning of tax statutes requires the use of "raw materials" in the creation of a new article.

to constitute manufacturing, or to constitute one a manufacturer, within the meaning of tax statutes, the operation, process, or activity in question must result in the production of a new and different article, product, or commodity, having according to some cases, a distinctive, name, character, or use. *Manufacturing in this connection, has also been defined, in terms of substance, as the production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties, or combinations, whether by hand labor or by machinery; or as the production of something by hand or machinery, as distinguished from a natural growth process; or as the making or conversion of raw or partly finished materials into articles suitable for use or marketing; or as a process which takes something practically unsuitable for any common use and changes it so as to adapt it to such common use* [*What constitutes manufacturing and who is a manufacturer under tax laws*, [17 ALR3d 7, sec. 3, pp. 23-25]. (Emphasis added.) *Elias Brothers, supra*, at p. 845.

In addition, Justice Cavanaugh further analyzed the application of the term "manufacturing " as it relates to the concepts of "food preparation" as distinguished from "food processing" and cited with approval the Pennsylvania case of *Van Bennett Food Co v City of Reading*, 87 Pa Commw 30, 37-38; 486 A2d 1025 (1985). In *Van Bennett*, the appellate court held that a process which consisted of: (a) cutting, chopping or dicing primary ingredients; (b) blending the ingredients together in a prepared dressing; and then (c) packaging the final product is not manufacturing. The Court reasoned that although the preparation may have altered the size, shape and color of the ingredients, the ingredients had not been changed to a new article.

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<sup>1</sup> "(a) 'Industrial Processing' means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage." MCL 205.45t.

That is, the ingredients contained the same essential qualities and the final product was essentially same as the original.

Thus, we must determine whether the preparation methods used for the food products at issue consists of the application of a high degree of skill, science and labor; and second, whether there has been a substantial transformation in form, qualities and adaptability in use so as to produce a new, different and useful article.

With respect to the food products at issue in the instant case, the record indicates that the preparation of coleslaw, pepper cabbage, health salad, tuna salad, and cranberry relish all involve a similar process consisting of cutting, chopping, or dicing primary ingredients, blending them together in a prepared dressing and packaging the final product. We do not find that the preparation of these products constitute "manufacturing" as that term has been defined. We fail to see how the preparation of these products requires a high degree of skill, science and labor. It can certainly be done in the home on a smaller scale. *Moreover, although the method of preparation altered the size, shape, and, in some instances, color of the original ingredients, these ingredients had not been changed to new and useful articles, substantially different in qualities and adaptability in use. The ingredients retained their same essential qualities and surely the final product is not to be put to a use not intended for the original ingredients.* [Emphasis added, citations omitted.] *Elias Brothers, supra*, at p. 847.

It is clear that the rationale of the Pennsylvania court has relevance in the present case. The government has taken the position that tobacco manufacturing occurs when: (1) cherry hookah tobacco is blended with grape hookah tobacco; or when (2) the small plastic bags of hookah tobacco are placed or packaged into small tin cans.

The mere blending of two identical products (hookah tobacco) clearly does not fall within the definition of manufacturing for the reason that at the beginning of the blending process we have Hookah Tobacco and at the end of the blending process we still have Hookah Tobacco. The ingredients of the product have not been changed and the final product is essentially the same. In addition, the packaging or re-packaging of the small plastic bags of tobacco into small tin containers does not create a new or different article.

Finally, it should be noted that the term "manufacture" is defined in the dictionary as "to make from raw materials by hand or machinery." *Merriam-Webster's Collegiate Dictionary* (10th ed.), p. 709. "Manufacture" is also defined as "to make or process (a raw material) into a finished product." *American Heritage Dictionary* (2nd College ed.), p. 764.

## **II. THE TPTA'S DEFINITION OF "MANUFACTURER" DID NOT SATISFY DUE PROCESS BY PUTTING THE DEFENDANT ON FAIR NOTICE OF THE CONDUCT THAT WOULD SUBJECT HIM TO PUNISHMENT**

### **A. Introduction**

The Michigan Supreme Court in *People v Howell*, 396 Mich 16; 238 NW2d 148 (1976) held that a statute may be challenged for vagueness on three grounds:

- (1) It does not provide fair notice of the conduct proscribed
- (2) It confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed or
- (3) Its coverage is overbroad and impinges on First Amendment freedoms.

*Howell, supra*, at p. 20.

The Supreme Court further warned that a vague law may trap the innocent by failing to provide fair warning. Therefore, the courts must insist that the law provide a person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he or she may act accordingly. *Howell, supra*, fn 4; see also *People v Fady Assy* 316 Mich App 302, 305; 891 NW2d 280 (2016).

In the present case, the defendant takes the position the statute fails to provide fair notice of the prohibited conduct and confers on the trier of fact unstructured discretion to determine whether an offense has been committed. The Michigan Supreme Court in *People v Hall*, 499 Mich 446, 460-461; 884 NW2d 561 (2016), stated that the Due Process Clause of both the United States and Michigan Constitutions provide that a state may not deprive a person of life,

liberty or property without Due Process. Due Process, on the other hand, requires that "a person receive fair notice of not only the conduct that will subject him to punishment but also of the severity of the punishment that a State may impose."

**B. A Criminal Statute Fails to Provide "Fair Notice" If An Individual May Be Required To "Guess At" Or Meaningfully Differ In Opinion Regarding What Conduct Is Proscribed**

The Michigan Court of Appeals in *People v Mesick*, 285 Mich App 535; 775 NW2d 857 (2009), followed the "fair warning" analysis set forth by the Supreme Court in *People v Dempster* 396 Mich 700; 242 NW2d 381 (1976) and further held that a criminal statute fails to provide "fair warning" if an individual of reasonable intelligence is required to "guess at" or "meaningfully differ in opinion" regarding what conduct is proscribed.

The Constitution requires criminal statutes to give "fair warning" to defendants on what conduct will constitute a crime without resorting to speculation, and they must provide adequate guidance to the trier of fact without requiring a court to "interpret" any ambiguities. *People v Dempster*, 396 Mich 700, 714-715; 242 NW2d 381 (1976). *Thus a person of reasonable intelligence may not be required to guess at or meaningfully differ in opinion regarding what conduct is proscribed*, but a "statute is sufficiently definite if its meaning can fairly be ascertained by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meaning of words". *People v Noble* 238 Mich App. 647, 651-652; 608 NW2d 123(1999) (Emphasis Added)  
*Mesick, supra*, at p. 544.

In the present case in the absence of a rule, regulation or guideline promulgated by the Department of Treasury, the average person is required to "guess at" what activity falls within the scope of "manufacturing" of Hookah tobacco. In addition, Michigan case law, as well as the dictionary definitions and treatises, all focus upon the inclusion of "raw material" to create a new article for sale. The Defendant neither used any raw material in the mixing or blending of the various flavored Hookah tobacco nor was any raw materials used to package the small bags of



Hookah tobacco into the small tin "360" containers. Therefore, the Defendant-Appellant clearly did not have fair notice of the conduct that is proscribed.

**C. The Michigan Supreme Court Has Previously Ruled That Where An Appellate Decision Is Required To Clarify "Proscribed Conduct" Such Decision Provides Constructive Notice to Future Defendants But The Application Should Not Be Applied Retroactively**

In *People v Dempster*, 396 Mich 700; 242 NW2d 381 (1976), the defendant was convicted of selling unregistered securities in violation of the Uniform Securities Act. One issue raised by the defendant was whether the securities were exempt as "commercial paper" from the registration provisions of the Act, while another issue raised was whether the "commercial paper" exemption within the Act provided fair notice to sustain a criminal conviction.

The Uniform Securities Act contained a provision that exempted from the registration requirement commercial paper which arose from a current transaction and which evidenced an obligation to pay cash within 12 months. The defendant took the position that the notes they sold were commercial paper and thus exempt. The Uniform Securities Act on the other hand did not specifically define the term "commercial paper". Therefore, the defendant argued that the definition of commercial paper as set forth in Article 3 of the Uniform Commercial Code should apply.

At trial, defendant called Professor James White of the University of Michigan Law School as an expert witness in the field of commercial transactions. Professor White testified that it was his opinion the instruments sold by the Defendant were commercial paper under Article 3 of the Uniform Commercial Code. The Michigan Supreme Court, however, ruled that the application of the Uniform Commercial Code definition of commercial paper was inappropriate in this particular setting. The Court held Article 3 did not have application to this case for the reason the Uniform Commercial Code is intended to simplify, clarify or modernize the law governing commercial transactions while the Uniform Securities Act is intended to



prevent a securities offering to the public without first giving the Securities Bureau an opportunity to investigate the offering.

The Court, therefore, focused on the administrative and judicial interpretation of the commercial paper exemption, rather than the Uniform Commercial Code definition of commercial paper. The Court in ruling the defendant's securities were not commercial paper adopted the administrative interpretation rendered by the Securities and Exchange Commission which stated the exemption only applies to prime quality negotiable paper. In support of this approach the Court adopted the federal appellate court analysis in *Zeller v Bogue Electric Manufacturing Corp*, 476 F2d 795, 899 (CA 2 1973) which held a ruling, " by an agency charged with the administration of a statute, while not conclusive, is entitled to substantial weight."

After considering the commercial paper exemption issue, the Michigan Supreme Court, then addressed the issue whether the defendant's right to due process was violated. Specifically, the defendant contended that it would be a violation of due process to impose this new interpretation of the "commercial paper exemption" retroactively in order to uphold the defendant's conviction. The defendant argued that if these instruments fit within an acceptable definition of commercial paper, they were free to rely on such definition unless the statutory definition clearly indicated otherwise.

In considering the defendant's due process arguments, the court quoted the standards set forth by the United States Supreme Court that: (1) No man shall be criminally responsible for conduct which he could not reasonably understand to be proscribed; (2) Criminal statutes must be explicit to inform those who are subject to it what conduct on their part will render them liable to criminal penalties; and (3) Ambiguity concerning the scope of criminal statutes should be resolved in favor of lenity.

The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute. The underlying principal is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed. *United States v Harriss*, 347 US 612, 617; 74 SCt 88, 812; 98 LEd 989 (1954).

A criminal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. *Connally v General Construction Co*, 269 US 385, 391; 46 SCt 126, 127; 70 LEd 322 (1926). No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. *Lanzetta v New Jersey*, 304 US 451, 453; 59 SCt 618, 619; 83 LEd 888 (1939). Ambiguity concerning the ambit of criminal statute should be resolved in favor of lenity. *Rewis v United States*, 401 US 808, 812; 91 SCt 1056, 1059; 28 LEd 493 (1971). *Dempster, supra*, at pp. 714, 715.

The Michigan Supreme Court finally, noted that the an appellate court's interpretation of statutory provisions may add a "clarifying gloss" to otherwise unclear words and, therefore, provide constructive notice to future defendants, but the application should not be applied retroactively.

It is true that interpretations of statutory provisions by a court may add a clarifying gloss to otherwise unclear words, and thereby provide constructive notice to Future defendants, but

'an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an Ex post facto law . . . and . . . the effect is to deprive (the defendant) of due process of law in the sense of fair warning that his contemplated conduct constitutes a crime. *Bouie v City of Columbia*, 378 US 347, 353, 355; 84 SCt 1697, 1702, 1703; 12 LEd2d 894 (1964).

\* \* \* \*

Thus, while the construction we have placed on the commercial paper exemption is valid for the future, "it may not be applied retroactively, any more than a legislative enactment may be, to impose criminal penalties for conduct committed at a time when it was not fairly stated to be criminal". *Bouie v City of Columbia*, *supra*, 378 US 362; 84 SCt 1707. *See also Douglas v Buder*, 412 US 430; 93 SCt 2199; 37 LEd 52 (1973).

*Dempster, supra*, at pp. 716-718.

In conclusion, the Michigan Supreme Court held that the "clarifying gloss" that it placed upon the commercial paper exemption is correct when the purpose of the Uniform Securities Act is considered. However, the Court reversed the Defendant's conviction because it was not persuaded that the term "commercial paper" standing by itself was sufficiently definite to allow the conviction to stand.

**D. Criminal Statutes Must Be Strictly Construed and Doubtful Conduct Should Be Found Not Criminal**

As previously noted, the Michigan Supreme Court in *Malpass v Department of Treasury*, held that in reviewing civil tax matters the Appellate Courts will not become a rule-making body for a governmental agency. In criminal matters, the Michigan Court of Appeals in *People v Jones*, 142 Mich App 819; 371 NW2d 459 (1985), noted that the appellate courts have uniformly held if there is doubt whether the act charged by the prosecutor is included within the scope of the prohibited conduct, that doubt should be resolved in favor of the defendant.

In interpreting penal statutes, courts will require clarity and explicitness in the defining of the crimes and the classification of acts which may constitute it. *People v Reese*, 363 Mich 329, 335; 109 NW2d 868 (1961). The reasoning behind this rule is that a penal statute should be so clear that any ordinary person can tell what he may or may not do thereunder. *Id.*

It is a fundamental rule of construction of criminal statutes that they cannot be extended to cases not included within the clear and obvious import of their language. *People v Ellis* 204 Mich 157, 161; 169 NW2d 930 (1918). If there is doubt as to whether the act charged is embraced in the prohibition that doubt is to be resolved in favor of the defendant. *Id.*; *Jones, supra*, at pp. 822-823.

In the present case the term "manufacturer" is not sufficiently defined in the Tobacco Products Tax Act to satisfy the Due Process mandate of the United States and Michigan Constitutions. If this Court provides a "clarifying gloss" to the definition of "manufacturer" such interpretation should only apply to future defendants but should not have retroactive effect to the Defendant-Appellant.

**RELIEF REQUESTED**

**WHEREFORE**, the Defendant-Appellant request this Honorable Court grant its Application for Leave to Appeal.

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